

# **POTPOURRI**

## **Department of Environmental Quality Office of the Secretary**

### **Declaratory Ruling No. DR-08-003 (0902Pot3)**

**Subject:** Proper interpretation of LAC 33:VII.508.B with respect to the affidavits necessary for any reduction of the rule's buffer zone requirement.

Under the authority of the Louisiana Environmental Quality Act, La. R.S.30:2001 *et. seq.*, and in accordance with LAC 33:I.1125.A, the Secretary of the Louisiana Department of Environmental Quality (LDEQ) hereby issues this Declaratory Ruling regarding the proper interpretation of Louisiana Administrative Code, Title 33, Part VII, Section 508.B (LAC 33:VII.508.B) with respect to the reduction of the rule's buffer zone requirement.

### **Background**

By letter dated August 12, 2008, IESI Corporation (IESI) requested a Declaratory Ruling regarding LAC 33:VII.508.B's requirements for a reduction in the 50-foot or 200-foot buffer zone for solid waste non-processing transfer stations. In particular, IESI has requested that the LDEQ's ruling address whether a reduction in the buffer zone requires a waiver/affidavit from all adjoining property owners or only all owners of the property where the buffer requirement is not met. The applicable language of LAC 33:VII.508.B states:

A reduction in the buffer zone requirement shall be allowed only with the permission, in the form of a notarized affidavit, of all adjoining landowners. A copy of the notarized affidavit waiving the 200-foot or 50-foot buffer zone requirement shall be entered in the mortgage and conveyance records of the parish or parishes in which the adjoining landowners' properties are located.

On December 1, 2008, the Northwest St. Tammany Civic Association (NWSTCA) also submitted a request for a Declaratory Ruling regarding the same issues raised in IESI's Petition.

Pursuant to LAC 33:I.1135.A, the NWSTCA's Petition was consolidated with the Petition submitted by IESI and this ruling is dispositive of the issues raised in both petitions.

### **Analysis**

Given its wording, there are two potential interpretations of LAC 33:VII.508.B. One of these is that the regulation envisions "all" property owners, even those where the buffer zone meets or exceeds the 50-foot or 200-foot requirements, acquiescing to any reduction in the buffer zone. While this result may appear plausible from a casual reading of the regulation, it was never intended, and, as explained below, will lead to unworkable consequences. Instead, a

second more limited interpretation is correct. Properly interpreted, the rule is viewed as applying only to those adjoining landowners where the buffer requirements are not met. Pursuant to this interpretation, the regulation ensures only that all owners of any piece(s) of property where the buffer is not met sign-off on any reduction in the buffer zone requirements.

The current text of the regulation is more easily understood by examining the prior version of the rule. Before its amendment in April of 2008, the rule stated:

A reduction in the buffer zone requirement shall be allowed only with the permission, in the form of a notarized affidavit, of the adjoining landowner. A copy of the notarized affidavit waiving the 200-foot or 50-foot buffer zone requirement shall be entered in the mortgage and conveyance records of the parish in which the adjoining landowner's property is located.

It is readily apparent that this regulation was directed at only those properties where the buffer was not met, and it envisioned only a single affidavit from "the" adjoining landowner. However, the regulation failed to anticipate those circumstances where more than one person maintained an ownership interest in a particular piece of property. This proved problematic for the LDEQ and was addressed in the April 2008 amendment of the rule. The problem with the original wording of the regulation is also recognized in Section II of the Fiscal and Economic Impact Statement Worksheet that accompanied the (2008) proposed rule. Here, the LDEQ noted:

Landowners that are neighbors to certain solid waste management facilities, and private and public owners and operators of non-processing transfer stations transferring nonputrescible solid waste, will benefit from the proposed rule. Less land will need to be purchased to comply with a 50-foot buffer zone, resulting in a savings in cost for the facility and less property loss for adjoining landowners. A provision that has been problematic for the department because it could be read as requiring only one adjoining landowner to sign an affidavit in order for a solid waste management facility to be allowed a decreased buffer zone will be clarified.

Thus, the amendment of the rule sought only to clarify all adjoining landowners of the property where the buffer was not met sign off on any reduction.

Given that there may be some confusion created by the current text of the current regulation, the LDEQ finds it is necessary to interpret the 2008 modifications in light of their intent. Such an inquiry into intent is necessary to avoid the unreasonable consequences that flow from too literal a reading of the rule. For example, reading the rule to require that every adjoining landowner sign off on a reduction in the buffer will force a facility to obtain a waiver of the 50-foot or 200-foot buffer from landowners who already benefit from a buffer that far exceeds these requirements. Further, too literal a reading would result in any reduction in the buffer being universal, applying to even those landowners where the regulatory buffer standard is met. This would force those landowners where the regulatory buffer is met to either oppose any reduction or surrender their right to the regulatory buffer that they would otherwise enjoy. Such an onerous result would make siting facilities difficult and provide absolutely no environmental

benefit. Using the rules governing statutory interpretation as a guide, such absurd consequences should be avoided. See: *SWAT 24 Shreveport Bossier, Inc. v. Bond*, 00-1695 (La. 6/29/01) 808 So.2d. 294; *Moreau v. Avoyelles Parish School Bd.*, 04-1613 (La.App. 3 Cir. 3/9/05), 8979 So.2d 875.

## **Conclusion**

The waiver requirement of LAC 33:VII.508.B was designed to address only those properties where the regulatory 50-foot or 200-foot buffer requirements are not met. Accordingly, to satisfy the requirements of the regulation, the LDEQ finds that IESI must obtain waivers only from the owners of property where the applicable regulatory buffer zone requirements are not met. However, any such waiver must be in the form of an affidavit from all persons having ownership interest in such properties. In addition, because it recognizes that some confusion has resulted from the current wording of the regulations, the LDEQ will initiate rule-making to further clarify the buffer zone requirements found in the solid waste regulations.

In accordance with LAC 33:I.1149.B.3, this declaratory ruling shall be published in the *Louisiana Register*.

Please note that, pursuant to LAC 33:I.1145 and La. R.S.30:2050.21, an aggrieved person may appeal this Declaratory Ruling to the 19<sup>th</sup> Judicial District Court, Parish of East Baton Rouge. A petition for review must be filed in the district court within 30 days of notice of the action.

Date: January 15, 2009  
Signed: Harold Leggett, Ph.D.  
Secretary

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